

OCT 10 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ABEL NESTOR NICANOR; et al.,

Petitioners,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 07-71876

Agency Nos. A75-760-340

A75-760-341

A75-760-343

A75-760-344

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 1, 2007 ***

Before: B. FLETCHER, BERZON and IKUTA, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
order affirming the denial of petitioners' applications for cancellation of removal.

* This disposition is not appropriate for publication and is not
precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R.
Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R.
App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Upon review of the record and petitioners' response to the court's order to show cause, we conclude that petitioners Abel Nestor Nicanor and Cirila Bernabe Bahena have failed to raise a colorable constitutional or legal claim to invoke our jurisdiction over this petition for review. *See Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001) (stating that traditional "abuse of discretion" challenges recast as alleged due process violations do not constitute colorable constitutional claims which would invoke appellate jurisdiction). Accordingly, respondent's motion to dismiss in part this petition for review is granted with respect to the above petitioners. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Romero-Torres v. Ashcroft*, 327 F.3d 887, 892 (9th Cir. 2003); *Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1144 (9th Cir. 2002).

Petitioners Juan Carlos Nicanor Bernabe and Lizbeth Nicanor Bernabe do not challenge the finding that they lack a qualifying relative as defined in 8 U.S.C. § 1229b(b)(1)(D). The BIA correctly concluded therefore that petitioners were ineligible for cancellation of removal. *See Molina-Estrada v. INS*, 293 F.3d 1089, 1093-94 (9th Cir. 2002). Accordingly, respondent's motion for summary disposition in part is granted with respect to the above petitioners.

07-71876

All other pending motions are denied as moot. The temporary stay of removal and voluntary departure confirmed by Ninth Circuit General Order 6.4(c) and *Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004), shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.